

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----:
IN RE NEW YORK POLICING DURING: Case No.: 20-cv-08924
SUMMER 2020 DEMONSTRATIONS :
: New York, New York
: May 9, 2023
-----: CONFERENCE

PROCEEDINGS BEFORE
THE HONORABLE GABRIEL W. GORENSTEIN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For People of NYS Office of the Attorney
The State of NY General
BY: Lillian M. Marquez
28 Liberty Street
New York, New York 10005

For Plf Gray: WYLIE LAW
BY: Wylie Stecklow, Esq.
10 Spring Street
New York, NY 10012

For Julian NY Civil Liberties Union
Phillips BY: Veronica Salama
125 Broad Street
19th Floor
New York, New York 10004

Proceedings recorded by electronic sound recording;
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APPEARANCES (Continued)

For Keith
Clingman:

The Aboushi Law Firm
BY: Tahanie AhAMD Aboushi
1441 Broadway - Suite 5036
New York, NY 10007

For City of NY

New York City Law Department
BY: Joseph Hiraoka
Jenny Sue-Ya Weng
Rob DiSenso
100 Church Street
New York, New York 10007

PROCEEDINGS

1 THE DEPUTY CLERK: This is the matter of In
2 Re: New York City Policing During Summer 2020
3 Demonstrations; Case Number: 20-cv-8924.

4 Starting with plaintiffs' counsel, please
5 state your appearance for the record.

6 MS. MARQUEZ: Good morning, Your Honor.
7 This is Lillian Marquez on behalf of the People of
8 the State of New York.

9 MR. STECKLOW: Good morning, Your Honor.
10 Wylie Stecklow for the plaintiffs in the Gray
11 matter.

12 MS. SALAMA: Good morning, Your Honor.
13 Veronica Salama on behalf of the Payne plaintiffs.

14 MS. ABOUSHI: Good morning, Your Honor.
15 Tahanie Aboushi on behalf of the Roland plaintiffs.

16 THE COURT: Who's on the line for the
17 defendants?

18 MR. HIRAKO: Yes, Your Honor, this is
19 Joseph Hiraoka, H-I-R-A-O-K-A, for the City of New
20 York.

21 MS. WENG: Jenny Weng, also for the City of
22 New York. Good morning, Your Honor.

23 MR. DISENKO: Good morning, Your Honor.
24 This is Anthony DiSenko. I'm an e-discovery counsel
25 at the New York City Law Department. And with

PROCEEDINGS

1 Your Honor's permission, I'm joined in my office by
2 Rob Szymanski, who is our e-discovery services
3 director. Mr. Szymanski is not an attorney, but is
4 here just to help with technical questions as
5 needed.

6 THE COURT: Okay. Thank you.

7 All right. So I'm trying to get the big
8 picture here. And at this point, all we're trying
9 to solve is the ten IAB numbers and associated files
10 and documents and how we're going to figure out
11 whether they were previously produced in full or
12 not.

13 So that's my view of the big picture. If
14 I've got that wrong, someone should jump in.

15 Ms. Marquez, is that what we're here for?

16 MS. MARQUEZ: That's the near term, yes,
17 Your Honor. And, of course, the later project would
18 be what this informs, which is a potential audit.

19 THE COURT: Right. I understand.

20 MS. MARQUEZ: But this is the project
21 before us right now, yep.

22 THE COURT: Yes. Okay. Yes. Now, where
23 this leads is another question. All right.

24 So, in my mind, there were two aspects of
25 this, one was to gather the papers on the ten IAB

PROCEEDINGS

1 numbers, and then the second was to see if they had
2 been produced before or not. I guess it's water
3 under the bridge as to the process for the
4 gathering. The City used a process described in its
5 letter. The plaintiffs said it could have been done
6 in a much simpler way by someone -- based on the
7 conversation they had with someone from IAB as to
8 how they -- that person could access the files
9 himself.

10 But I gather, Ms. Marquez, that's water
11 under the bridge now, right?

12 MS. MARQUEZ: That's my understanding, that
13 that's been collected and done. And any question
14 about that process, we could revisit if there's an
15 audit.

16 THE COURT: Okay. Mr. Hiraoka, there's
17 nothing left on that, right? You collected what
18 you're going to collect.

19 MR. HIRAOKA: Yeah, that's -- that's
20 correct, yes, Your Honor.

21 THE COURT: Okay. So, yeah, obviously, if
22 we go down this road again, it seems like the
23 plaintiffs' process is much better, but I don't want
24 to get into that now. Okay.

25 So, now, all we're trying to do is figure

PROCEEDINGS

1 out -- do a comparison of what you have sitting in
2 front of you right now, Mr. Hiraoka, in some form,
3 or available to you in some form, and what was
4 previously produced.

5 Mr. Hiraoka, is that right?

6 MR. HIRAOKA: That's correct, Your Honor.

7 THE COURT: Okay. So I guess what is
8 confusing me is I -- it seems -- one way to do
9 this -- and the plaintiffs seem to have volunteered
10 for this -- is to simply give them this stuff, and
11 then they can figure out whether they think they've
12 gotten it before. And that seems like an, actually,
13 really good way of doing it.

14 Are the plaintiffs still volunteering to
15 have that be the process if it's faster?

16 MS. MARQUEZ: Yes, Your Honor.

17 THE COURT: Okay. So what -- I mean, what
18 is the -- what is the impediment then to simply
19 producing those files right now?

20 MR. HIRAOKA: Right, Your Honor, there's no
21 true actual impediment except for maybe that of a
22 possible time constraint. But as I said in my
23 letter, yeah, we don't have any objection --

24 THE COURT: No, no. What is the time
25 constraint? What is it you have to do to these

PROCEEDINGS

1 files?

2 MR. HIRAOKA: Well, the thing --

3 THE COURT: How complicated is it?

4 MR. HIRAOKA: Right. Well, before we turn
5 them over, you know, if we're going to turn over
6 the -- reproduce the full files, what we still have
7 to do is that -- and we're in the process of it
8 right now -- is redacting them to make sure that any
9 personal or sensitive information is, in fact,
10 redacted. And that's basically where we are right
11 now. So some of these files --

12 THE COURT: How many pages are these files?

13 MR. HIRAOKA: Oh, Judge, they go -- it
14 would go into the -- my estimation, into the
15 thousands of pages because there are -- some of
16 these documents -- there of various sizes. Some are
17 small, but some have -- you know, the terminology is
18 they have 225 documents to them, and a document
19 contain -- can contain any number of pages within
20 the document. So -- and some of them have 21
21 documents, some have 225 documents, so it's a wide
22 range.

23 So we're in the process right now -- we've
24 already started this -- of what we call quality
25 controlling them. We're in the process of redacting

PROCEEDINGS

1 them, you know, sensitive information and so forth.
2 And then after that, then we can provide them to the
3 plaintiffs' attorneys.

4 THE COURT: Well, I -- you know, I just --
5 I have no sense of -- you know, the affidavit
6 doesn't really address these issues, and it's devoid
7 of any times. You know, I have no idea how long it
8 took to do any of this stuff. I don't know -- I
9 mean, I -- you know, sometimes you can look -- you
10 can see a document of 100 pages, maybe, or a
11 particular type, and you know already that there's
12 going to be nothing in it that needs redacting, and
13 sometimes you can't tell that.

14 Ms. Marquez, I'm -- do you have any help
15 that you can give me as to what I can order on this
16 front? Or do you think it's going to be better to
17 go the other route?

18 MS. MARQUEZ: I -- my preference would be
19 just to do the process on our end, just to make sure
20 that we're actually getting the documents because,
21 as Your Honor noted, the affidavit has some gaps
22 where I'm unclear as to what exactly is happening on
23 defendants' end in terms of the manual review. They
24 mentioned a term search. I don't really know, you
25 know, what defendants are doing to de-dupe, so, you

PROCEEDINGS

1 know, I -- we could possibly offer, you know, that
2 we can make this attorneys' eyes -- these ten logs
3 attorneys' eyes only, you know, for the purpose of
4 this exercise to expedite the process.

5 THE COURT: Mr. Hiraoka, why can't we just
6 do that?

7 MR. HIRAKO: Excuse me, Your Honor.
8 It's -- that is, of course, an option. But, you
9 know, again, my primary concern is the safety and
10 security of the officers involved. I don't want --
11 even though it could be an attorneys' eyes only
12 designation and so forth, I would still strongly
13 prefer that we be allowed to redact the personal
14 information and contact information for the various
15 officers for their own safety. That's something
16 that's very important to the City. It's something
17 that's very important to me.

18 And as in Ms. Marquez's letter, she said
19 that, you know, she has no problem with them taking
20 over the review if we can do it -- if we can turn
21 them over by May 12th. And, like I said, we have no
22 problem in having them do that. I would just say,
23 perhaps, if we could turn them over -- and it won't
24 have to be all at once. We can do it on a rolling
25 basis. But if you could give us maybe -- perhaps,

PROCEEDINGS

1 maybe until May 17th to do that, then I would have
2 no problem with that because I -- because, again,
3 Your Honor, my primary concern is safety of the NYPD
4 officers. That's very, very important to me and to
5 the City, and me personally, especially.

6 MS. MARQUEZ: And this is Ms. Marquez
7 again, Your Honor.

8 My understanding is that there can -- if
9 the concern is, for instance, telephone numbers or
10 Social Security numbers -- which I don't believe the
11 latter is contained in any of these. But for phone
12 numbers, there should be an automated way to search,
13 you know, regular patterns of numbers. So if it
14 were a phone number, it would be 334 -- 3-3-4
15 patterns that can be redacted. We don't mind if
16 they use that automated redaction technology, which
17 shouldn't, you know, require too much time.

18 THE COURT: Mr. Hiraoka, are you familiar
19 with this technology?

20 MR. HIRAOKA: I -- I'm sorry. No, I'm not
21 aware if we have that sort of -- for -- again,
22 Your Honor, I'm not a tech person, but if we have
23 that sort of text search content capability, we have
24 someone from ED on the line. Maybe they could speak
25 to that. But I personally am not aware if we have

PROCEEDINGS

1 that sort of capability.

2 And it's beyond that. You know, we also --
3 because we also redact the police officer's official
4 photograph as well. And when it comes to things
5 like -- because we're also interested in protecting
6 the personal information of any complainants as
7 well. And, you know, they have different numbers --
8 you know, Social Security numbers and so forth. I
9 personally won't know what those are, so even if we
10 had that capability, I won't be able to type in, you
11 know, a set of numbers to make sure every sequence
12 of numbers that match will be redacted because I
13 won't know the Social Security numbers, for example.

14 THE COURT: Ms. Marquez, I mean, I have
15 some sympathy with -- especially since it's an
16 electronic form -- with not putting out there a
17 document that could -- that contains the
18 information. Let me ask you this question -- I
19 mean, I'm prepared, if necessary, to order it be
20 produced by a certain date, either the 17th or
21 something earlier.

22 Would it be of any utility for you to go
23 over to their offices and look through a paper copy
24 of whatever this stuff is, even without the
25 redaction, or look at their computer or a screen

PROCEEDINGS

1 that they would set up, which would give to my mind
2 complete assurance on the privacy issue. But, you
3 know, I just don't know if you could do anything
4 with that.

5 Ms. Marquez, before I hear from
6 Mr. Hiraoka, I'll just want to hear from you whether
7 there's any point in trying to go down that route.

8 MS. MARQUEZ: I don't think -- so the part
9 of the efficiency, it would need to happen
10 electronically to do the de-dupe, as I understand
11 it, and so that would have to, you know, be run
12 through Relativity. So a -- so the -- you know, the
13 manual review or visual review is something we're
14 trying to avoid. So I'd say that doesn't resolve
15 it.

16 But I would say to the earlier point
17 regarding automated redactions, which is something
18 as -- you know, that is simply -- even available on
19 as simple a software as PDF, Adobe PDF, they have --
20 the City has represented regular -- you know,
21 regularly during meet and confers previously that
22 that is something that they utilize. And if the --
23 you know, there is a technical person on the line
24 who could confirm that the capability of theirs so
25 that there is no, you know, concern that they could

PROCEEDINGS

1 use that to redact any Social Security numbers.
2 Again, I don't -- I don't believe that is something
3 that's reflected on any of these documents.

4 But, in any event, they could readily
5 redact Social Security numbers, phone numbers. I
6 don't think photographs are PII, but, again, I --
7 you know, at least the phone numbers and Social
8 Security numbers are something that could be easily
9 redacted by an automated search for number patterns.

10 THE COURT: Mr. Hiraoka, is Mr. DiSenso or
11 Mr. Szymanski going to have information they can
12 give us? Or we can -- I can ask them directly.

13 MR. HIRAOKA: Your Honor, yeah, for that
14 particular question, I -- this is Joe Hiraoka. You
15 can ask Mr. DiSenso.

16 But I just want to also point out, Your
17 Honor, that it's more than just, you know, phone
18 numbers and so forth. So even if you have the
19 capability, and even if I know a particular sequence
20 of numbers for any particular complainant, you know,
21 even if they -- we have that capability, there's
22 also other sensitive information that may be in
23 there, such as, you know, medical information,
24 things of that nature.

25 So the text based sort of search, where I

PROCEEDINGS

1 can just, you know, plug in numbers and so forth,
2 while -- even if we had the technology that may help
3 to some degree, there is other information in there
4 that I would not want -- that I would not want
5 revealed, even under an A -- an attorneys' eyes only
6 designation. So if you have medical information --

7 THE COURT: All right. All right.

8 MR. HIRAOKA: -- it's going to be
9 sensitive. I wouldn't want to disclose that or
10 divulge that.

11 THE COURT: So let's -- I'm going to make
12 it --

13 MS. MARQUEZ: And --

14 THE COURT: Yes. Go ahead.

15 MS. MARQUEZ: Sorry, Your Honor. Just one
16 clarification.

17 I think what I'm hearing from Mr. Hiraoka
18 is that you need to know the specific numbers in the
19 pattern. What I'm saying is that it could be any
20 series of numbers so long as it matches a pattern of
21 three numbers, dash three numbers dash four numbers,
22 which would be a phone number, or three dash two
23 dash four to be SSN. It could be any combination of
24 numbers. There's no need to know the numbers
25 precisely. They'll just all be redacted on any

PROCEEDINGS

1 pattern of numbers that fits that formulation, and
2 that's what makes it so nice and simple.

3 THE COURT: Okay.

4 MR. HIRAOKA: Okay. And can I just respond
5 very quickly, Your Honor?

6 THE COURT: Yep.

7 MR. HIRAOKA: Okay. Yeah, so I understand
8 that. But, you know, even with a particular
9 sequence of numbers, there's also a possibility,
10 like, for example, let's just say I want to -- I
11 want to block out a precinct number, police
12 officer's number, whatever. There's also a
13 possibility that that may also block a phone number
14 for a complainant, which is what the plaintiffs
15 would be entitled to and what they would want, so --

16 THE COURT: But that's a -- but that could
17 be solved later. That's the point. The point is,
18 we need to -- we need to do this roughly right now
19 for our very limited purpose, which is do a
20 comparison. If it turns out there's some number
21 improperly blocked, they can come back to you on
22 that.

23 MR. HIRAOKA: True.

24 THE COURT: Mr. Hiraoka, our goal is to --
25 our goal -- we have a different goal here right now.

PROCEEDINGS

1 MR. HIRAKO: Right, no, and I understand
2 that, Your Honor. But, like, I'm saying is that, in
3 addition to -- I was just addressing Ms. Marquez's
4 statement about, you know, the ability to predict a
5 sequence of numbers. Understanding that there's a
6 time constraint here, which is a -- one of the
7 primary concerns of the Court, my primary concern in
8 addition to that as well, in addition to the time
9 constraint -- but is also to make sure that any
10 private information regarding the officers is
11 totally protected. And, you know, I'm not asking
12 for, like, weeks and weeks and weeks.

13 Ms. Marquez --

14 THE COURT: I understand that. I thought
15 you were resisting using this system because you
16 thought it would over redact. Perhaps I
17 misunderstood you.

18 MR. HIRAKO: Well, number one, I don't
19 know if we have that capability. Ms. Marquez says
20 that we've made representations to that in the past.
21 I mean, I have not. I don't know if others have, so
22 I don't know. So maybe Mr. DiSenso could speak to
23 that. But what I'm saying is that, in addition to
24 numbers, I'm also concerned about things like, you
25 know, private medical information as well. That's

PROCEEDINGS

1 all I'm saying.

2 THE COURT: I understand.

3 All right. Let's hear from Mr. DiSenso.

4 MR. DISENSO: Your Honor --

5 THE COURT: Mr. DiSenso.

6 MR. DISENSO: Yes, Your Honor. This is
7 Mr. DiSenso. Again, Your Honor, I'm in my office
8 with Mr. Szymanski. As a result, I am on speaker
9 phone. I hope that's okay.

10 Just to address Ms. Marquez's point about
11 the pattern redaction. That's what we call -- and
12 that is the technology that -- the name for the
13 technology, it is called "pattern redaction." We
14 can use it. It does need to be QC'd. Ms. Marquez
15 is correct, that it would essentially identify
16 anything with a pattern, the same pattern, so it
17 wouldn't be number specific. It would just be any
18 phone number or any -- any pattern of Social
19 Security number with the -- what is a Social
20 Security number, a nine-digit number.

21 However, there are limitations to that.
22 And I just -- I think this is the point that needs
23 to be emphasized with respect to the pattern
24 redaction, as well as the reliance on any kind of
25 hash value de-duplication, is that it is not -- it

PROCEEDINGS

1 is not perfect.

2 With respect to the pattern redaction, it
3 does need to be QC'd, and it's reliant on text being
4 able to be extracted accurately out of a document.
5 That's not always possible depending on how the
6 document is formatted.

7 So those are the only things I would say.
8 It's not something that would allow us to avoid
9 looking at the -- the actual documents to confirm
10 that they were redacted accurately, but it is
11 something that we have used in this case, and we can
12 use it with this project.

13 THE COURT: All right. Ms. Marquez,
14 anything else?

15 MS. MARQUEZ: I guess I don't really have
16 anything else, other than that --

17 THE COURT: I mean, he's proposed -- he's
18 proposed a deadline of May 17th.

19 MS. MARQUEZ: Again, I don't really
20 understand, you know, why -- it sounded like the
21 attorney's eyes only concern was if the contact
22 information or Social Security numbers would be
23 divulged. It's sounding like they can do this
24 pattern redaction. I haven't heard anything to say
25 that that would take more than a day.

PROCEEDINGS

1 The quality control issue, again, we're
2 okay with over redaction of numbers to get this
3 process moving. And so if that's, you know, the
4 concern -- I don't know that quality control of the
5 numbers redaction is necessary. So if the only
6 outstanding concern is medical information, if we
7 could, again, just do the attorneys' eyes only to
8 get this moving, I don't see the need to wait until
9 the 17th to get these documents because, again, now,
10 we -- if it's going to be on us to do the
11 de-duplication process, we'll need to have the time
12 to run those, those documents on our end so that we
13 can then revisit the question of the audit.

14 And my concern is the ongoing prejudice
15 that the -- we're having depositions in the
16 meantime, you know, so I'm just trying to make sure
17 we have enough time to do this whole process and not
18 deprive plaintiffs of this information.

19 THE COURT: All right. So I gather,
20 Mr. Hiraoka, this is not an all or nothing thing.
21 As you get them done, you can turn them over, right?

22 MR. HIRAOKA: Yes.

23 THE COURT: Okay. I'm going to give you
24 until a week from today. That's the 16th. If you
25 can't make the 16th, your only other option is just

PROCEEDINGS

1 turn it over attorneys' eyes only. Do not bother
2 coming to me for an extension because that's your
3 option.

4 MR. HIRAOKA: Understood.

5 THE COURT: You have until -- you have
6 until the end of the day, a week from today, the
7 16th.

8 MR. HIRAOKA: Thank you, Your Honor.

9 THE COURT: And as soon as you have
10 something available, turn it over to them.

11 MR. HIRAOKA: Absolutely, yes. We'll turn
12 them over on a rolling basis, Your Honor.

13 THE COURT: Okay. Anything else we need to
14 do today from the plaintiffs?

15 MS. MARQUEZ: No, Your Honor. Thank you.

16 THE COURT: From defendant? Mr. Hiraoka,
17 anything?

18 MR. HIRAOKA: No, nothing from the
19 defendant, Your Honor. Thank you.

20 THE COURT: All right. Thank you.
21 Goodbye.

22 MR. HIRAOKA: Goodbye. Thank you.

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1 C E R T I F I C A T E
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3 I, Adrienne M. Mignano, certify that the
4 foregoing transcript of proceedings in the case of
5 In Re: New York Policing During Summer 2020
6 Demonstrations; Docket #20cv8924 was
7 prepared using digital transcription software and is
8 a true and accurate record of the proceedings.

9

10 Signature Adrienne M. Mignano
11
12 ADRIENNE M. MIGNANO, RPR

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14 Date: May 18, 2023
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